

**FEDERAL MARITIME COMMISSION**

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**Docket No. 1949(F)**

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**WALTER MUZORORI,  
Claimant**

**vs.**

**CANADA STATES AFRICA LINES INC.,  
Respondent**

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**RESPONDENT'S MOTION TO OPPOSE  
CLAIMANT'S MOTION FOR ENLARGEMENT OF TIME**

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**INTRODUCTION**

Respondent CANADA STATES AFRICA LINES INC. ("CSAL") respectfully opposes Claimant WALTER MUZORORI's Motion for Enlargement of Time.<sup>1</sup> Claimant makes no showing of good cause to excuse his failure to submit this motion at least five days prior to the filing date for his Reply Brief. That alone is grounds for summary rejection of this last minute request.<sup>2</sup> Nor does Claimant's motion establish any exceptional circumstances that would merit enlargement of time, much less one that would result in a tripling of the time period originally allowed.<sup>3</sup> Accordingly, the Motion for Enlargement should be denied.

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<sup>1</sup> See Claimant's Motion for Enlargement of Time, *Muzorori v. Canada States Africa Lines, Inc.* (Fed. Mar. Comm'n. 2015) (No. 1949(I)), at Exhibit 1.

<sup>2</sup> 46 C.F.R. § 502.102(a).

<sup>3</sup> 46 C.F.R. § 502.102(b)

## **PROCEDURAL HISTORY**

On May 4, 2015, Judge Erin Wirth held a telephone conference with Claimant and counsel for CSAL to assess the status of discovery and evaluate the prospects for settlement. During that conference Judge Wirth advised Claimant regarding procedural and substantive aspects of this proceeding, including Claimant's burden to establish a claim under the Shipping Act and potential liability for attorneys costs and fees if unsuccessful. Judge Wirth also emphasized that Claimant had a right to seek legal counsel, but Claimant remained firm in his intention to pursue his claim *pro se*.

On May 12, 2015, Judge Wirth issued the Briefing Schedule for these proceeding, setting June 15, 2015 as the deadline for Claimant's Initial Brief, July 15, 2015 as the deadline for Respondent's Opposition Brief, and July 30, 2015 as the deadline for Claimant's Reply Brief.<sup>4</sup> This timeline gave Claimant more than a month to prepare and present a valid Shipping Act claim – a claim he had *already* pursued through Commission-sponsored arbitration beginning in 2014. Claimant submitted his Initial Brief on June 15, 2015,<sup>5</sup> as required by the Briefing Schedule and CSAL timely submitted its reply brief on July 15, 2015. Fifteen days was allowed under the Briefing Schedule for Claimant to consider and reply to the evidentiary matters and arguments presented in CSAL's Opposition Brief. Two days before the filing deadline, Claimant through newly retained counsel moved for a thirty day extension of that fifteen day reply period. Claimant filed that motion without any attempt to communicate with CSAL, or to explain the need for such a long extension, or to seek consent.

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<sup>4</sup> Briefing Schedule, *Muzorori v. Canada States Africa Lines, Inc.* (Fed. Mar. Comm'n. 2015) (No. 1949(I)), at Exhibit 2.

<sup>5</sup> See Claimant's Brief, *Muzorori v. Canada States Africa Lines, Inc.*, (Fed. Mar. Comm'n. 2015) (No. 1949(I)).

## ARGUMENT

Claimant seeks a thirty day extension *beyond* the fifteen day period currently authorized under the Briefing Schedule, for a total of forty-five days. No good cause for this request has been shown. Because Claimant failed to file this motion at least five days before the deadline for his Reply Brief, and because he failed to show good cause for this delay, “summary rejection” of the request is appropriate under the Commission’s Rules.”<sup>6</sup>

Even if Claimant had submitted his motion in a timely fashion, the fact that he decided at the last minute to retain counsel to assist with his Reply Brief would not constitute “exceptional circumstances” warranting an enlargement. As discussed above, Judge Wirth reminded Claimant of his right to counsel during the May 4, 2015 conference, before the submission of briefs began, but Claimant was adamant about proceeding *pro se*. Claimant’s motion makes no reference to an illness, family emergency, Act or God, or other “exceptional” circumstance that was beyond his control and precluded timely filing of a reply brief. Nor is it clear why Claimant now requires an additional thirty days to prepare a reply – particularly in light of the limited nature and scope of a reply brief.<sup>7</sup>

Customary practice is for counsel to accord professional courtesy to a request for additional time. But Claimant’s prior abuse of his *pro se* status (*e.g.*, his evasion of the obligation to cooperate on a Joint Status Report, and his submission, as supposed evidence, of the details of prior settlement offers made on a non-prejudicial basis), coupled with the failure of either Claimant or his newly-retained counsel to seek CSAL’s consent to an extension or explain the reason for this last minute request, militate against granting such customary

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<sup>6</sup> 46 C.F.R. § 502.102(a).

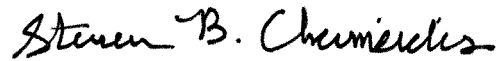
<sup>7</sup> Exhibit 2, *supra*, note 2, at ¶ C (“The Reply Brief . . . may not include new proposed findings of fact.”).

deference to this request for Enlargement of Time. (To avoid any claim of surprise, Respondent has notified Claimant's newly-appointed counsel of this opposition prior to it being filed.)


**CONCLUSION**

In light of the foregoing, CSAL respectfully requests that Claimant's Motion for Enlargement of Time be denied.

CANADA STATES AFRICA LINES INC. (CSAL)  
By its Attorneys:



Steven B. Chameides  
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Dated: July 29, 2015

## **APPENDIX**

<b><u>No.</u></b>	<b><u>Exhibit Description</u></b>
1.	Claimant's Motion for Enlargement, <i>Muzorori v. Canada States Africa Lines, Inc.</i> (Fed. Mar. Comm'n. 2015) (No. 1949(I)).
2.	Briefing Schedule, <i>Muzorori v. Canada States Africa Lines, Inc.</i> (Fed. Mar. Comm'n. 2015) (No. 1949(I)).

**CERTIFICATE OF SERVICE**

I hereby certified that I electronically filed this document on **July 29, 2015**, and that a true and correct copy of the foregoing was served on the Commission, and Claimant's counsel via Federal Express (return receipt requested) and electronic mail.

A handwritten signature in black ink, appearing to read "Christopher M. Swift", written over a horizontal line.

Christopher M. Swift  
Counsel for Canada States Africa Lines, Inc. (CSAL)

# EXHIBIT 1

**FEDERAL MARITIME COMMISSION**

<b>WALTER MUZORORI,</b>	)	<b>Docket No. 1949(F)</b>
Claimant	)	
vs.	)	
	)	
<b>CANADA STATES AFRICA LINES, INC.</b>	)	
Respondent	)	

**MOTION FOR ENLARGEMENT OF TIME**

On behalf of Walter Muzurori ("Claimant") and in accordance with CFR §502.102 , I make the following representations:

I. Introduction

Claimant hereby petitions the Federal Maritime Commission, through his counsel, Erica L. Bazzell, Esquire for an enlargement of time to submit Claimant's Reply Brief due on July 30, 2015. In support thereof he avers as follows:

1. Claimant retained counsel on July 28, 2015. Counsel has simultaneously entered a Notice of Appearance.
2. Counsel is requesting a 30 day extension to prepare a Reply Brief for Claimant.

II. Argument

This Commission has the authority to grant this motion for enlargement of time based on the exceptional circumstances described above and in accordance with CFR §502.102.

### III. Conclusion

For the foregoing reasons, petitioner respectfully requests that this motion for enlargement of time be granted and petitioner permitted an additional thirty days to submit a Reply brief.

Respectfully submitted,



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Date: July 28, 2015

**FEDERAL MARITIME COMMISSION**

WALTER MUZORORI,

Claimant

**VS.**

**CANADA STATES AFRICA LINES, INC.**

Respondent

**Docket No. 1949(F)**

## CERTIFICATE OF SERVICE

I hereby certified that I electronically filed this document on July 28, 2015, and that a true and correct copy of the foregoing was served on the Commission and Respondent via USPS first class mail and via electronic mail to the following addresses:

Steven B. Chameides, Esquire  
Christopher M. Swift, Esquire  
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Federal Maritime Commission  
Office of the Secretary  
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Washington, D.C. 20573  
secretary@fmc.gov

**Erica L. Bazzell**  
**Attorney for the Claimant**

**Date: July 28, 2015**

# **EXHIBIT 2**

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 1949(F)**

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**WALTER MUZORORI**

**v.**

**CANADA STATES AFRICA LINES INC. (CSAL)**

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**BRIEFING SCHEDULE**

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On December 23, 2014, the Commission received Walter Muzorori's initial filing of an informal complaint under Subpart S. On January 29, 2015, respondent Canada States Africa Lines, Inc., filed an objection to proceeding under Subpart S. On February 2, 2015, a Notice of Assignment was issued converting this to a formal proceeding under Subpart T and appointing the Administrative Law Judge. 46 C.F.R. § 502.311. On February 19, 2015, an Initial Order was served. On March 19, 2015, the parties both filed status reports.

On May 4, 2015, a pre-hearing conference was held to discuss the status of discovery and settlement negotiations. The parties indicated that no additional discovery was needed but that additional time for settlement discussions would be helpful. The parties were instructed that if they settled their dispute, they should file a motion seeking approval of the settlement agreement with a copy of the settlement agreement. The parties were advised that a Briefing Schedule would be issued if no settlement was reached by May 11, 2015. While the parties are encouraged to continue settlement discussions, at this point, it is necessary to begin briefing in the proceeding.

It is hereby **ORDERED** that the parties comply with the following deadlines:

June 15, 2015	Walter Muzorori files his Initial Brief and Appendix.
July 15, 2015	Canada States Africa Lines files its Opposition Brief and Appendix.
July 30, 2015	Walter Muzorori files his Reply Brief.

All briefs should be filed with the Secretary, served on the other party, and an electronic copy in a word-processing format should be sent to all parties *and to the Office of Administrative Law Judges*. The following requirements shall be followed when filing briefs:

**A. Initial Brief with Proposed Findings of Fact**

The Initial Brief should explain what evidence supports the Complainant's allegation that the Respondents violated the Shipping Act. This document should include: (1) introductory section describing the nature and background of the case, (2) proposed findings of fact in numbered paragraphs with citations to the Appendix, (3) argument based upon principles of law with appropriate citations of the authorities relied upon, and (4) conclusions.

**B. Opposition Brief with Response to Proposed Findings of Fact**

The Opposition Brief should explain what evidence supports the Respondent's allegation that they did not violate the Shipping Act. This document should include: (1) introductory section describing the nature and background of the case, (2) responses to Complainant's proposed findings of fact, and additional findings if necessary, in numbered paragraphs with citations to the Appendix, (3) argument based upon principles of law with appropriate citations of the authorities relied upon, and (4) conclusions.

**C. Reply Brief**

The Reply Brief should respond to the legal arguments discussed in Respondent's brief. This brief may include responses to any findings of fact proposed in the Opposition Brief but may not include new proposed findings of fact.

**D. Appendix<sup>1</sup>**

The documentary evidence on which a party bases its Proposed Findings of Fact must be included in an Appendix in the following format:

1. The cover of the appendix must identify the party or parties that prepared the appendix; *e.g.*, "Complainant's Appendix."
2. The pages of the appendix must be numbered sequentially.

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<sup>1</sup> The parties can see examples of the format required for the Proposed Findings of Fact ("Served October 4, 2007, Procedural Order, Attachment A Administrative Law Judge Tentative Findings of Fact") and the Appendix ("Served October 4, 2007, Procedural Order, Attachment A Administrative Law Judge Tentative Findings of Fact, Appendix") in the proceeding *Clutch Auto, Ltd. v. International Touch Consolidator, Inc.*, FMC No. 1880(F), accessed from the Commission's web site through "Docket Activity Logs."

3. The appendix must begin with a table of contents identifying each document and identifying the appendix page at which each document begins and noting if any pages are entitled to confidential treatment.
4. Each party must ensure that all documents in its appendix are legible.
5. The parties are instructed, to the extent practicable, to cite to a document in an appendix already in the record rather than include the same document in its own appendix. For instance, if Respondent contends that a document included in Complainant's appendix rebuts the evidence Complainant claims supports a proposed finding of fact, Respondent should cite to Complainant's appendix rather than include a second copy of the same document in its own appendix.
6. The parties should include in the appendix only those pages necessary to identify the document and support its proposed fact. For instance, if support for a party's proposed fact is found on pages 79 and 80 of a deposition transcript, the party should include the cover sheet, pages 79 and 80, and only those preceding and following pages necessary for context, not the entire deposition transcript.
7. If a party includes documents in a language other than English in its appendix, Commission Rule 7 provides:

Every document, exhibit, or other paper written in a language other than English and filed with the Commission or offered in evidence in any proceeding before the Commission under this part or in response to any rule or order of the Commission pursuant to this part, must be filed or offered in the language in which it is written and must be accompanied by an English translation thereof duly verified under oath to be an accurate translation.

46 C.F.R. § 502.7. Unless the document has already been translated by another party, the party who wants to use the document must supply the translation.

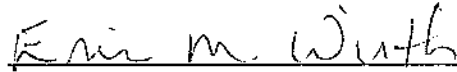
8. The parties must avoid including multiple copies of the same document in the appendix.

**E. Stipulations**

The parties may, by stipulation, agree upon any facts involved in the proceeding. 46 C.F.R. § 502.162. The parties are expected to attempt to narrow the issues and to shorten the proceeding by stipulations. Stipulations must be signed by the parties and should be included in the Appendix. This document must set forth stipulations in numbered paragraphs. Each paragraph must be limited as nearly as practicable to a single factual proposition. The parties must provide an electronic copy of the Stipulations in a word-processing format *to the Office of Administrative Law Judges*.

**F. Electronic Copies of Documents in a Word-Processing Format**

Electronic copies of documents in a word-processing format should be provided by email or on a portable electronic storage device. The parties are directed to consult with each other to determine the most practicable way to send electronic copies to each other. The parties are directed to send the electronic copy to the Office of Administrative Law Judges or send a portable electronic storage device directly to the Office of Administrative Law Judges.

  
Erin M. Wirth  
Administrative Law Judge